

Construction contractors incur a Use Tax liability on the cost price of items such as trees and shrubs that they plant in the ground for their customers. See 86 Ill. Adm. Code 130.1965(c)(2). (This is a GIL).

December 6, 2002

Dear Xxxxx:

This letter is in response to your letter dated June 27, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We would like a letter ruling as to the taxability of materials such as sod, shrubs, etc. which are installed. We are under the impression that since our clients do not pay sales tax at the time the materials are purchased, that when they have an installation job, they are to pay use tax on the cost of the materials and that this is to be shown on Step 4 of the sales tax return, rather than including the cost of the materials on line 3, Step 1.

Would you please advise us on the correct way to handle this situation? If you have a need to discuss this, please feel free to call.

We have enclosed 86 Ill. Adm. Code 130.1965, the Department's regulation that explains the sales tax liabilities of florists and nurserymen. Retailers' Occupation Tax liability is incurred on tangible personal property that is sold at retail. Fertilizer, shovels and other tools, shrubs, trees, or other plants that are delivered to customers but not planted by the vendor are subject to Retailers' Occupation Tax.

When shrubs, trees, or other plants or similar items are transplanted into the ground for the customer by the vendor, the vendor is acting as a construction contractor. In this case, the construction contractor incurs a Use Tax liability on his cost price of the items planted. See 86 Ill. Adm. Code 130.1965(c)(2). The contractor should pay this Use Tax liability to his supplier. If the contractor does not pay Use Tax to his supplier, the tax should be paid on the ST-1 sales tax return for the period when the shrubs, trees, or other plants were withdrawn from inventory and sold and transplanted for the customer.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.